

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SYNTRIX BIOSYSTEMS, INC.,

Plaintiff,

v.

ILLUMINA, INC.,

Defendant.

CASE NO. C10-5870 BHS

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT

This matter comes before the Court on Defendant Illumina, Inc.'s ("Illumina") motion for partial summary judgment (Dkt. 94). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On November 24, 2010, Plaintiff Syntrix Biosystems, Inc. ("Syntrix") filed a complaint against Illumina alleging infringement of United States Patent No. 6,951,682 ("682 patent"); trade secret misappropriation under the Uniform Trade Secrets Act, RCW Chapter 19.108 ("UTSA"); breach of contract; and unjust enrichment. Dkt. 1.

1 On November 21, 2012, Illumina filed a motion for partial summary judgment on  
2 Syntrix's state law claims. Dkt. 94. On December 20, 2012, Syntrix responded. Dkt.  
3 109. On January 4, 2013, Illumina replied. Dkt. 115.

## 4 II. FACTUAL BACKGROUND

5 On September 17, 1999, Dr. John A. Zebala filed U.S. utility patent application  
6 09/332,815 ("815 application"), which claimed priority to U.S. provisional patent  
7 application number 60/110,529, filed on December 1, 1998. In January of 2000, Syntrix  
8 and Illumina entered into a nondisclosure agreement. Dkt. 95, Declaration of Eric Fraser  
9 ("Fraser Decl."), Exh. 1 ("NDA"). Syntrix contends that, after entering into the NDA, it  
10 provided Illumina with "a confidential packet containing a multi-media presentation and  
11 patent applications, including a copy of the '815 application that was not publicly  
12 available at that time." Dkt. 109 at 8 (citing Dkt. 110, Declaration of Jeffrey G. Frank  
13 ("Frank Decl."), Exhs. C & D)).

14 On February 10, 2000, Illumina filed U.S. provisional patent application  
15 60/181,631 entitled "Alternative Substrates And Formats For Bead-Based Array Of  
16 Arrays." Frank Decl., Exh. E ("631 application"). The provisional application was non-  
17 public when it was filed, and Syntrix contends that "it is undisputed that Illumina did not  
18 inform Dr. Zebala" about the filing. Dkt. 109 at 9. The application, however, was  
19 published on August 16, 2001. Fraser Decl., Exh. 5. For the purposes of this motion,  
20 Illumina "assumes the truth of Syntrix's allegations" that Illumina

21 used [Syntrix's] confidential information to (1) draft [the '631 application],  
22 (2) create its accused BeadChip line of products and the instruments that  
read the results of experiments performed on BeadChips, (3) form a

1 “business model” to manufacture and sell its BeadChip products, and (4)  
2 create the word “Sentrix” used in the names of some of its products.

3 Dkt. 94 at 4.

4 On October 4, 2005 the ‘815 application issued as the ‘682 Patent, which is titled  
5 “Porous Coatings Bearing Ligand Arrays and Use Thereof.”

6 On September 14, 2006, Dr. Zebala received an email informing him of possible  
7 patent infringement. Specifically, Francis Barney stated that “Joe was looking at the  
8 Illumina website and was surprised to find something that looked an awful lot like . . .  
9 your patent.” Fraser Decl., Exh. 9. Dr. Zebala stated in his deposition that, upon viewing  
10 the website, it appeared that (1) Illumina’s use of his business information “was  
11 apparent,” (2) Illumina infringed his patent, and (3) Illumina’s product name was very  
12 similar to Syntrix. *Id.*, Exh. 8 at 555–564. Dr. Zebala’s discoveries led to  
13 communications via counsel.

14 On January 24, 2007, Syntrix’s counsel wrote to Illumina regarding a license to  
15 the ‘682 patent. *Id.*, Exh. 10. On February 13, 2007, Syntrix’s counsel wrote another  
16 letter comparing Illumina’s BeadChip to specific language from the ‘682 Patent. *Id.*,  
17 Exh. 11.

### 18 **III. DISCUSSION**

19 Illumina moves for summary judgment on Syntrix’s UTSA, breach of contract and  
20 unjust enrichment claims.  
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**A. Summary Judgment Standard**

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some metaphysical doubt”). *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

The determination of the existence of a material fact is often a close question. The Court must consider the substantive evidentiary burden that the nonmoving party must meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically attested by that party contradict facts specifically attested by the moving party. The

1 nonmoving party may not merely state that it will discredit the moving party's evidence  
2 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*  
3 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,  
4 nonspecific statements in affidavits are not sufficient, and missing facts will not be  
5 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

6 **B. UTSA**

7 Washington's UTSA provides a statute of limitations of three years. *See* RCW  
8 19.108.060. The limitations period for a trade secret claim runs from when "the  
9 misappropriation is discovered or by the exercise of reasonable diligence should have  
10 been discovered." RCW 19.108.060. The clock starts "when the claimant knows or  
11 should know the relevant facts, whether or not the plaintiff also knows that these facts are  
12 enough to establish a legal cause of action." *McLeod v. Nw. Alloys, Inc.*, 90 Wn. App.  
13 30, 36 (1998); *see also Precision Airmotive Corp. v. Rivera*, 288 F. Supp. 2d 1151, 1153  
14 (9th Cir. 2003) (Plaintiff "had in its possession all that was necessary for it to discover  
15 any alleged misappropriation . . ."). Either disclosure or use of a trade secret triggers the  
16 statute of limitations period. *See McLeod*, 969 P.2d at 1070 ("Once the date of the  
17 unauthorized disclosure is established, the McLeods cannot argue that a new period was  
18 triggered when Northwest Alloys actually implemented or 'used' the trade secret in its  
19 operation."). In Washington, "a continuing misappropriation constitutes a single claim."  
20 RCW 19.108.060.

21 In this case, Illumina contends that Syntrix's UTSA claim is barred by the statute  
22 of limitations. Illumina argues that any trade secret of Syntrix was disclosed in August

1 2001 when the ‘631 application was published. Dkt. 94 at 9. Even if any trade secret  
2 was not publicly disclosed, Dr. Zebala had actual knowledge of Illumina’s use in 2006  
3 when he viewed Illumina’s website and in early 2007 when his counsel wrote the letters  
4 to Illumina. Syntrix counters that “the great weight of the evidence demonstrates” that  
5 Dr. Zebala first learned of Illumina’s possible misappropriation in June 2010 when he  
6 learned about the ‘631 application. Dkt. 109 at 23. The applicable standard, however, is  
7 not “the great weight of the evidence.”

8 First, the Federal Circuit has recognized that the publicly noticed filing of patent  
9 protection may constitute constructive knowledge for purposes of discovering a claim  
10 based on the misappropriation of trade secrets and commencing the statute of limitations.  
11 *Adv. Cardiovascular Sys., Inc. v. Medtronic Vascular, Inc.*, 182 Fed. Appx. 994, 999–  
12 1000 (Fed. Cir. 2006) (unpublished). Syntrix attempts to distinguish this case on the  
13 basis that the *Medtronic* court relied on a patent publication as well as public disclosure  
14 through publications and at conferences. Dkt. 109 at 13–14. This argument is  
15 unpersuasive because the *Medtronic* court gave no indication that all of the cited  
16 disclosures were necessary to find constructive knowledge or any indication that any one  
17 disclosure would not be dispositive, especially a published application. Therefore, the  
18 Court finds that Syntrix had constructive notice of possible misappropriation when the  
19 ‘631 application was published in August of 2001.

20 Second, even if Syntrix did not have constructive notice in 2001, it had actual  
21 notice in 2006 and, at the latest, by early 2007. When Dr. Zebala viewed Illumina’s  
22 website and his counsel contacted Illumina regarding the possibility of a patent license,

1 he had in his possession all that was necessary for him to discover any alleged  
2 misappropriation. Syntrix argues that knowledge of patent infringement does not equate  
3 to knowledge of trade secret misappropriation. Dkt. 109 at 14–16. While the scope of  
4 the content may not perfectly overlap, once knowledge of alleged patent infringement is  
5 established, a person exercising reasonable diligence could have discovered any  
6 misappropriation of trade secrets under the same NDA that covered Syntrix’s patented  
7 technology. Therefore, the Court grants Illumina’s motion on Syntrix’s UTSA claim.

### 8 **C. Breach of Contract**

9 The parties agree that the NDA is governed by California law. *See* Dkt. 109 at  
10 16–18; Dkt. 115 at 10–11. In California, the limitation period of four years runs from the  
11 time of the breach of contract. *See Perez-Encinas v. AmerUs Life Ins. Co.*, 468 F. Supp.  
12 2d 1127, 1134–35 (N.D. Cal. 2006); *April Enters., Inc. v. KTTV*, 195 Cal. Rptr. 421, 437  
13 (Ct. App. 1983). Under the “discovery rule” recognized by California courts, a cause of  
14 action accrues when the plaintiff discovers or could have discovered, through the exercise  
15 of reasonable diligence, all of the facts essential to his cause of action. *Id.* at 826.

16 In this case, Illumina argues that Syntrix’s breach of contract claim is barred  
17 regardless of whether the discovery rule applies. Dkt. 115 at 11. The Court agrees. The  
18 NDA specifically classifies patents and patent applications as confidential material. *See*  
19 NDA, Appendix. On September 26, 2006, Dr. Zebala received an email informing him  
20 of possible patent infringement by Illumina. Syntrix’s cause of action accrued on or soon  
21 after this date because Dr. Zebala could have discovered, through the exercise of  
22 reasonable diligence, the facts essential to breach of the NDA by disclosure of the

1 contents in his patent application. In fact, this information led to letters regarding patent  
2 licensing and infringement allegations. Therefore, the Court grants Illumina's motion on  
3 Syntrix's breach of contract claim.

4 **D. Unjust Enrichment**

5 Illumina moves for summary judgment on Syntrix's unjust enrichment claim.  
6 Dkt. 94 at 13–14. Syntrix failed to respond, which the Court considers an admission that  
7 Illumina's motion has merit. Local Civil Rule 7(b)(2). Therefore, the Court grants  
8 Illumina's motion for summary judgment on Syntrix's unjust enrichment claim because  
9 Illumina has shown that it is entitled to judgment as a matter of law and Syntrix has failed  
10 to show that a material question of fact exists.

11 **E. Equitable Tolling**

12 “Equitable tolling is appropriate when it would effectuate: 1) the policies  
13 underlying the statute, and 2) the purposes underlying the statute of limitations.”  
14 *Douchette v. Bethel School District No. 401*, 117 Wn.2d 805, 812 (1991) (citing *Hosogai*  
15 *v. Kadota*, 145 Ariz. 227, 231, 700 P.2d 1327 (1985)). “Equitable tolling focuses on a  
16 plaintiff's excusable ignorance and lack of prejudice to the defendant.” *Leong v. Potter*,  
17 347 F.3d 1117, 1123 (9th Cir. 2003) (citing *Santa Maria v. Pac. Bell*, 202 F.3d 1170,  
18 1176 (9th Cir. 1991)). However, “once a claimant retains counsel, tolling ceases because  
19 she has gained the means of knowledge of her rights and can be charged with  
20 constructive knowledge of the law's requirements.” *Leong*, 347 F.3d at 1123 (citing  
21 *Leorna v. U.S. Dep't of State*, 105 F.3d 548, 551 (9th Cir. 1997)).  
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1 In this case, Syntrix contends that its claims are subject to equitable tolling. Dkt.  
2 109 at 18–19. The Court disagrees. With regard to Syntrix’s contract claim, Dr. Zabala  
3 was on notice of a potential breach in September of 2006. He has failed to submit facts  
4 showing excusable ignorance of the law or of a potential breach of the contract that he  
5 personally signed. With regard to Sytnrix’s other claims, it is undisputed that Syntrix  
6 retained intellectual property counsel in January 2007 and didn’t file suit until November  
7 2010. There is no excusable ignorance in failing to file claims when counsel has been  
8 retained for almost the entire period of limitations. Therefore, the Court denies Syntrix’s  
9 request to grant equitable tolling of its claims.

#### 10 IV. ORDER

11 Therefore, it is hereby **ORDERED** that Illumina’s motion for partial summary  
12 judgment (Dkt. 94) is **GRANTED**.

13 Dated this 30th day of January, 2013.

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16 BENJAMIN H. SETTLE  
17 United States District Judge  
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